

MINUTES OF THE ANNUAL MEETING
OF
THE NEBRASKA JUDICIAL RESOURCES COMMISSION
OCTOBER 4, 2010

The annual meeting of the Nebraska Judicial Resources Commission was held on the 4th day of October, 2010, at the hearing room in the State Capitol building with participants also attending at video conferencing sites at Omaha and North Platte.

Chairman McCormack called the meeting to order and called the roll of members:

PRESENT

(Lincoln)
Judge Michael McCormack, Chr.
Judge Patrick McDermott
Judge Robert O'Neal
Judge John Samson
Riko Bishop
Robert Parker
Mark Sipple
Lori Scherer
Amy Schlichting
Darlene Starman
Frank "Jay" Turco
(Omaha)
Thomas Hoarty
(North Platte)
Brian Phares

ABSENT

Steven Mattoon
Judith Wells
Brian Baxter

Members of the Commission introduced themselves. Thereafter, Janice Walker, Nebraska State Court Administrator made a presentation on the general duties of the members of the Commission and explained the statistical reports which would be provided by her office to assist the Commission in its work. Mr. Sipple asked for a clarification on the Justice System. Judge McDermott requested some data on the age and length of service of judges to assist with succession planning.

Judge McCormack called for nominations for the office of vice-chairman and nominated Mark Sipple. Judge McDermott moved and Judge O'Neal seconded that nominations cease and a unanimous ballot be cast for Mr. Sipple. Voting yes, all present. Mr. Sipple abstained. Motion carried.

Judge McCormack called for nominations for the office of secretary and nominated Judge McDermott. Seconded by Lori Scherer. Voting yes, all present. Judge McDermott abstained. Motion carried.

The Chairman called for approval of the minutes of the meeting of May 4, 2010. Moved by Mr. Sipple, second by Judge Samson that the minutes be approved. Voting yes, all present. Darlene Starman abstained.

The Chairman identified and received into the record Exhibits 1 through 18.

The Chairman then called for consideration of the vacancy in the District Court of the 6th Judicial District of Nebraska, as a result of the resignation of Judge Quist. The Chairman called for testimony. Judge John Samson, Senator Kent Rogert, Mr. Mike Kinney, NSBA President, and Robert Hillis, NSBA past President, and Judge William Binkard all testified in support of filling the vacancy. No testimony in opposition. It was moved by Judge O'Neal and seconded by Riko Bishop that the vacancy in the office of District Judge in the 6th District be filled with the primary office being located at the City of Blair. Voting yes, all present. Judge Samson abstains. Motion carried.

The Chairman then offered for consideration certain amendments to the rules of the Commission and explained the rules. The rules were amended on page 1 to strike "'s office" from the sixth line from the bottom. Amended rules with that correction are attached to these minutes. It was moved by Judge McDermott, seconded by Judge Samson, that the amendments as corrected at the meeting be adopted. Voting yes, all present. Motion carried.

The Chairman called for consideration of the vacancy in the County Court of the 11th District as the result of the removal of Judge Florum from office. The Chairman called for testimony. Judge Kent Turnbull, Robert Lindemeier, and Mr. Mike Kinney, NSBA President all testified in support of filling the vacancy. No testimony in opposition. It was moved by Mr. Sipple, seconded by Mr. Phares that the vacancy in the County Court of the 11th Judicial District be filled with the primary office being located in the City of North Platte. Voting yes, all present. Motion carried.

The Chairman then opened the annual meeting and called for testimony or comments on the need for, or reduction of, present judgeships, the need to alter present boundaries or any other item dealing with allocation of judicial resources. Judge Lori Yardley of the County Court of Lancaster County renewed the request for an additional county judge to serve that jurisdiction. Discussion revealed that the Bar Study done in 2006 had recommended the creation of five new judicial positions and that only the creation of an additional district judge in the 3rd District had been undertaken by the Legislature. It was moved by Mr. Parker and seconded by Ms. Bishop that the remaining judgeships recommended by the Bar Study consisting of a county judge in the 3rd Judicial District, a district judge and a county judge in the 2nd Judicial District, and a juvenile judge in the Separate Juvenile Court of Douglas County be authorized by the Legislature when it is fiscally prudent to do so. Voting no, Judge McDermott and Brian Phares. Voting yes, all others present. Motion carried.

There being no further business to come before the Commission, it was moved by Judge Samson and seconded by Mr. Turco that the Commission stand adjourned. Voting yes, all present. Motion carried.

Respectfully submitted:


Judge Patrick McDermott, Secretary

Title - Nebraska Judicial Resources Commission
Chapter 1 - Organization, Public Meetings, and Procedure

001 Organization

001.01 The Nebraska Judicial Resources Commission shall consist of: (1) four judges: one Supreme Court Judge, one district court judge, one county court judge, and one separate juvenile court judge; each appointed by the Supreme Court; (2) six members of the Nebraska State Bar Association who have practiced law for at least ten years in this State, one from each of the six judicial districts prescribed in Article V, § 5 of the Nebraska Constitution, to be appointed by the Executive Council of the Nebraska State Bar Association; (3) one citizen from each of the six aforementioned judicial districts, and one citizen who shall be appointed at large, to be appointed by the Governor, none of whom shall be (a) a Supreme Court judge or a judge of any other court, active or retired, (b) a member of the Nebraska State Bar Association, or (c) an immediate family member of any person listed in subdivisions (3)(a) or (3)(b) of this rule.

001.02 In the event of the death, retirement, resignation, or removal of a district, county, or separate juvenile judge or the failure of a district, county, or separate juvenile judge to be retained in office: or upon the request of a majority of the members of the Judicial Resources Commission, the Judicial Resources Commission shall, after holding a public hearing, determine whether a judicial vacancy exists in the affected district or any other judicial district or whether a new judgeship or change in number of judicial districts or boundaries is appropriate. The public hearing may include videoconferencing, or if the judicial workload statistics compiled by the State Court Administrator indicate a need for a number of judges equal to or greater than the number currently authorized by law, the Commission may conduct a hearing by telephone conference.

If the Commission determines a vacancy exists in a district or county court district, the Commission may also make a recommendation to the Supreme Court of the site for a primary office location.

By December 15, 1995, and each year thereafter, the Judicial Resources Commission shall hold a hearing to determine whether (1) a new judgeship is appropriate in any judicial district or a reduction in judgeships is appropriate in any judicial district or (2) the judicial district boundaries or the number of judicial districts should be changed for the district or county courts. The Commission shall also examine current caseload statistics and make any appropriate recommendations for the more balanced use of existing judicial resources. The State Court Administrator shall provide adequate administrative support and information as requested by the Commission. A report of this hearing and any recommendations shall be filed by the Commission with the Legislature, the Governor, and the Supreme Court on or before December 31 of each year.

001.03 The determination made by the Commission pursuant to rule 001.02 shall be based upon an analysis of judicial workload statistics compiled by the State Court Administrator, adequate access to the courts by litigants, population, other judicial duties, travel time, and any other factors determined by the Supreme Court to be necessary to assure efficiency and service. After the Commission makes a determination, it shall make a written recommendation to the Legislature. If the Commission determines that no changes in existing law are necessary or desirable, the Commission shall inform the Legislature of such conclusion in writing.

001.04 The member judge of the Supreme Court shall serve as chairperson of the Commission and preside over Commission meetings.

001.05 At its first meeting, unless a quorum of Commission members is not present, the Commission shall elect from its members, other than the member judge of the Supreme Court, a vice-chairperson and a secretary. The vice-chairperson's and secretary's term of office shall be two years, at the conclusion of which new elections shall be held. Any member of the Commission elected vice-chairperson or secretary shall be eligible for re-election for any additional term or terms. In the event of a vacancy, it shall be filled by

appointment of the chairperson and the person appointed shall serve for the balance of the original term.

001.06 The vice-chairperson shall preside over Commission meetings in the absence of the chairperson.

001.07 The secretary shall be responsible for keeping minutes of all Commission meetings in the manner hereinafter prescribed and any other responsibilities set forth in these rules.

001.08 The State Court Administrator shall be responsible for maintaining a list of the news media requesting notification of Commission meetings, providing proper notice of Commission meetings as prescribed in rules 002.03 and 002.04, and providing for the tape recording of Commission meetings pursuant to rule 003.05.

002 Public Meetings

002.01 Commission meetings shall be held at a location to be determined by the chairperson, provided however, that the site selected by the chairperson shall not be too small to accommodate any anticipated audience. The meeting may include videoconferencing.

002.02 It shall be the responsibility of the chairperson to promptly notify the State Court Administrator of the date, location, and agenda of all meetings.

002.03 Unless it is necessary to hold an emergency meeting as provided in rule 002.04, notice of the time and date of all Commission meetings, as well as an agenda of the subjects to be considered, shall be provided by the State Court Administrator to the public by providing press releases containing such notice to a newspaper of general circulation in the state, and to at least one other newspaper of general circulation in the affected district or districts if possible, at least seven (7) days prior to the date of the meeting. The State Court

Administrator shall also provide such notice to each member of the Commission and to each member of the news media contained on the list kept pursuant to rule 001.08 at least seven (7) days prior to the date of the meeting.

002.04 If the chairperson determines that it is necessary to hold an emergency meeting, such a meeting may be held without advance public notice, provided however, that the chairperson and the State Court Administrator shall make reasonable attempts to provide advance notice of the meeting and of the subjects to be discussed to members of the news media contained on the list kept pursuant to rule 001.07. Such an emergency meeting may, at the chairperson's discretion, be held by means of electronic or telecommunications equipment. When it is necessary to hold an emergency meeting, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. It shall be the responsibility of the secretary to insure that complete minutes of such an emergency meeting specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public at the Office of the Court Administrator, Room 1207, State Capitol Building, Lincoln, Nebraska 68509-8910, no later than the end of the next regular business day.

002.05 Except in the case of a closed session as provided in rule 002.06, the public shall have the right to attend and the right to speak at all Commission meetings and all or any part of such meetings may also be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing, provided however:

002.05A the chairperson shall require all persons desiring to address the meeting to identify themselves and the nature of their presentation prior to commencement of the meeting on a list to be provided by the secretary;

002.05B the chairperson shall limit each individual desiring to address the meeting to a ten (10) minute presentation;

002.05C those expressing a desire to address the meeting shall be called to speak by the chairperson in the order in which their names appear on the list assembled pursuant to rule 002.05A;

002.05D the chairperson retains discretion to determine whether persons not appearing on the list assembled pursuant to rule 002.05A, but subsequently expressing a desire to address the meeting, may do so and the order in which such persons will appear;

002.05E the chairperson retains discretion to limit the number of persons allowed to address the meeting in the interests of preventing undue delay or cumulative testimony;

002.05F the chairperson retains discretion to limit the quantity and types of equipment permitted in the meeting room in the following manner: (1) the chairperson may limit the right to record and reproduce Commission proceedings as provided in this rule to persons or organizations which are part of the news media; (2) the chairperson may prohibit the use of any equipment which produces distracting sound or light or is otherwise obtrusive; and (3) the chairperson may prohibit the recording or reproduction of private discussions between members of the Commission not intended for public hearing; and

002.05G upon motion made by any member of the Commission and the affirmative vote of a majority of the Commission members present, the chairperson shall waive all or any part of the provisions of subsections (A) through (E) of this rule.

002.06 Upon motion made and an affirmative vote of a majority of the voting members of the Commission taken in an open meeting, the Commission may hold a closed meeting, provided however:

002.06A the closed session must be clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual who has not requested a public meeting; and

002.06B the vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded by the secretary in the minutes.

002.07 The Commission shall restrict its consideration of matters during a closed session to only those matters set forth in the minutes as the reason for the closed session. The chairperson shall reconvene the meeting in open session before any formal action may be taken.

002.08 Any member of the Commission shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the Commission and the disposition of such a challenge shall be recorded by the secretary in the minutes.

003 Procedures

003.01 Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the Commission members in open session and the secretary shall record in the minutes how each member voted or if the member was absent or non-voting, provided however, that votes to elect the vice-chairperson and secretary as provided in rule 001.05 shall be taken by secret ballot and the chairperson shall report the total number of votes for each candidate for inclusion in the minutes.

003.02 A majority of nine (9) Commission members present shall constitute a quorum necessary for the transaction of business. For purposes of this rule, the transaction of business shall not include the receipt by the Commission of testimony or other information if no vote or other official action is taken with respect to such testimony or information.

003.03 A majority of Commission members (9) shall be required for the passage of any motion or determination of the Commission.

003.04 It shall be the responsibility of the secretary to keep minutes of all Commission meetings. The minutes shall include the time and place of the meeting, members present and absent, the substance of all matters discussed, and any further information as prescribed elsewhere in these rules.

003.05 The State Court Administrator shall provide for the tape recording of all Commission meetings.

003.06 If any member of the public desires to present any written materials to the Commission relating to any item listed on the agenda, the person shall submit twenty (20) copies thereof to the chairperson, 10 days prior to the meeting. The chairperson shall distribute a copy to each member and attach copies for inclusion as part of the minutes of the meeting.

003.07 It shall be the responsibility of the secretary to make available at the meeting, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at Commission meetings and to attach one copy of all such materials for inclusion in the minutes.

003.08 It shall be the responsibility of the secretary to insure that a written copy of the minutes of all Commission meetings and all attachments thereto are available for public inspection at the Office of the Court Administrator, Room 1207, State Capitol Building, Lincoln, Nebraska 69509-8910, within ten working days or prior to the next convened meeting, whichever occurs earlier.

003.09 These rules may be amended by motion made and a majority vote of all Commission members.